In the Supreme Court of the United States

OCTOBER TERM 1941

No.....

McLAUGHLIN LAND AND LIVESTOCK COMPANY, a corporation,
Petitioner,
vs.
BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation,
Respondent.

Brief in Support of Petition for Writ of Certiorari

THE OPINION OF THE COURT.

A certified copy of the opinion of the Circuit Court of Appeals is contained in the record forwarded to

NOTE: All italics are by petitioner unless otherwise noted.

this Court by the clerk of said Circuit Court (R. p. 206-208). No opinion was written by the District Court. Its judgment is set forth at page 126 of the Record. The findings of the Special Master, which the District Court judgment approved, are set forth at pages 52 to 66 of said Record.

JURISDICTION OF THE COURT.

The jurisdiction of the court is invoked under Title 28, Judicial Code and Judiciary, section 347A (Sec. 240 Judicial Code, as amended).

STATEMENT OF THE CASE.

The essential facts are stated in the accompanying petition for certiorari and in the interest of brevity are not herein repeated. Any necessary elaboration will be made in the argument which follows.

SPECIFICATION OF ERRORS.

The United States Circuit Court of Appeals erred in the following particulars:

I.

In failing to reverse the judgment of said District Court.

II.

In failing to hold that the District Court was in error in affirming the findings of the Special Master that

petitioner was precluded from disputing respondent's claimed ownership of the property by the judgments in the state court actions between the parties.

III.

In failing to hold that the District Court was in error in concluding that petitioner was foreclosed from establishing its title to said property or disputing respondent's claimed ownership thereof by the judgment in the former proceedings of petitioner under said Section 75.

IV.

In failing to hold that the District Court was in error in affirming the procedure followed by the Special Master in accepting the stipulation of counsel to abide the outcome of a state court action and in affirming the findings and recommendation of said Special Master that petitioner's application under said section should be dismissed because of said stipulation and the asserted effect thereof.

V.

In failing to hold that said District Court and said Special Master were without jurisdiction or authority to determine the question of ownership of said property on a motion to dismiss petitioner's application for relief.

VI.

In failing to hold that the District Court was in error in refusing to deny the motion of respondent to dismiss and in refusing to direct the determination

of the question of ownership of such property in summary proceedings.

VII.

In failing to hold that such District Court was in error in refusing to deny said motion to dismiss and in refusing to direct that the matter of the application of petitioner for relief be fully inquired into and considered on its merits at a hearing before the Conciliation Commissioner, as contemplated by the Bankruptcy Act.

VIII.

In failing to hold that the District Court was in error in refusing to exercise its exclusive jurisdiction to determine questions involving title to property claimed by such debtor irrespective of pending state court actions, prior state court actions or the previous proceedings of petitioner under said Section 75.

IX.

In failing to hold that petitioner was entitled to relief under said Section 75 regardless of whether or not it owned said property.

ARGUMENT.

I.

THE PETITIONER WAS ERRONEOUSLY PREVENTED BY THE DISTRICT COURT FROM SUSTAINING THE BURDEN WHICH THE CIRCUIT COURT CLAIMED IT WAS REQUIRED TO SUSTAIN, NAMELY, THAT PETITIONER WAS THE OWNER OF THIS PROPERTY AND THEREFORE WAS A FARMING CORPORATION.

In the latter part of this argument we will call the attention of the court to the fact that at the time of the filing of petitioner's present application for relief under said Section 75 the question of whether petitioner or respondent owned the farming property had never been an issue and in fact had never been determined in any state court action or in the previous proceedings of petitioner under said Section 75. We shall be able there to establish that such state court unlawful detainer actions determine no issue relating to title to property; that the deficiency action between the parties contained no issue respecting title and that the only valid determination in the former proceedings of petitioner under Section 75 was that petitioner had no corporate capacity at the time, and therefore the court in those proceedings was without jurisdiction to hear the application for relief under said Section 75. (94 Fed. 2d 491)

But irrespective of whether our contentions with reference to the effect of such state court actions or the former proceedings of petitioner for relief under said Section 75 are with or without merit, is of no

controlling importance upon this application. This petition for certiorari is primarily directed to the fundamental contention that in the present proceedings the Special Master and the District Court followed a procedure in administering Section 75 of the Bankruptcy Act not heretofore recognized or sanctioned by the decisions of this Court or the decisions of any Circuit or District Court. In this regard we have pointed out that the Bankruptcy Court believed itself controlled by previous and pending state court actions between the parties as well as the previous proceedings of petitioner under said Section 75, that therefore your petitioner could not dispute respondent's claim of ownership, and that for such reasons respondent's motion to dismiss must be granted.

Because of the fact that the Special Master and the District Court were clearly erroneous in such conclusion and therefore pursued a course in this matter which was wholly arbitrary and contrary to law, petitioner was prevented from seeking to establish the very fact that the Circuit Court determined it had failed to establish, namely, that it was the owner of farming property and therefore was a farming corporation.

In its application for relief under said Section 75 petitioner alleged that it was a farming corporation. Moreover said application set forth facts establishing that petitioner was then actively engaged in farming operations (R. p. 2). The schedules of assets accompanying said application listed the very property, the ownership of which the decision of the Circuit Court

decided petitioner failed to establish (R. pp. 12, 13). Under the regular procedure contemplated by Section 75 of the Bankruptcy Act, this petition was approved for filing by the District Court and immediately referred to a Conciliation Commissioner (R. p. 1). No hearing has ever been held before said Conciliation Commissioner as the statute required.

Instead, the motion of respondent to dismiss was referred to and heard before a Special Master. The conclusion of the Special Master after a consideration of the records of the state court actions and the previous proceedings of petitioner as a debtor, approved by the District Court, was that the petitioner was foreclosed upon this issue of ownership of said property by such state court actions, one of which was pending at the time petitioner filed its application for relief, and by said previous proceedings of petitioner under said Section 75 (R. p. 64). Having so concluded the lower court then held that although petitioner was in the possession of the property and actively farming it, it was not the owner thereof and therefore was entitled to no relief under said Section 75 (R. p. 65).

It is respectfully submitted that the Special Master and the District Court misconceived their jurisdiction and authority in arbitrarily concluding upon the basis of such state court actions or the former proceedings of the petitioner that petitioner did not own the farming property and therefore was not a farming corporation. Neither the past actions between the parties

nor the then pending state action was to any extent controlling upon said Special Master or the District Court upon the hearing of respondent's motion to dismiss.

As pointed out by the court in

Eaves v. Glenn, et al., 9 F. Supp. 647-650, 651,

> "Primarily this act of Congress is for the benefit of farmer debtors. Creditors under it are not merely those who have money demands against the farmer, debtor, but who have any kind of claims against him. Defendant here, after crediting the amount bid for the property, has a deficiency judgment against these debtors. In each case they are seeking possession of the lands involved, and, in order to realize upon the foreclosure judgments and sales and perfect in themselves such titles as they may convey and be acceptable to others, they must take further legal proceeding in state court against the debtors. However secure defendants may be as to their legal rights in the premises, it is my view that Congress intended, in just such situations, that the farmer be given an opportunity, in a hearing before the *conciliation commissioner*, with all his creditors and claimants present to procure a composition or extension of his debts. The theory seemed to be this: Even though litigation had commenced and sales occurred, in such a conference or hearing concessions might be made and the farmer helped and enabled to carry on. Certainly the defendant here could voluntarily undo what has been done. In a hearing before the conciliation commissioner, a settlement might be

reached that would better serve the interests of all parties. I do not know. Anyway, Congress intended that the opportunity to do so be afforded, even in an *extreme* case like this.

"These being my views as to the effect of the statute upon the situation of these parties as we find them under the undisputed facts, I will *overrule the defendants' motion to dismiss* and refer these matters to the conciliation commissioners of Palmer and Floyd Counties, with directions that the *usual* proceedings in such matters be had in these cases."

To the same effect:

In *Re Wilkinson*, 10 Fed. Supp. 100.

To the same effect also is the recent decision of

In re Duffy, 9 F. Supp. 167-169.

Therein, the court declares:

"Subdivision (n) of section 75 of the Bankruptcy Act (11 U. S. C. A. sec. 203 (n) provides that the filing of petition for relief under section 75 shall subject the farmer and his property wherever located to the 'exclusive jurisdiction of the court.' This is in accord with the logic of the opinions of the Supreme Court in the case of Gross v. Irving Trust Co., 289 U. S. 342, 53 S. Ct. 605, 77 L. Ed. 1243, 90 A. L. R. 1215, and Isaacs v. Hobbs Tie & Timber Co., 282 U. S. 734, 51 S. Ct. 270, 75 L. Ed. 645. It is clear from these cases that, while the court must recognize the constitutional provisions which protect one's life, liberty and property, and thus preserve all such

rights as existed at the time bankruptcy intervened, yet when, how, and where such rights shall be enforced lies *wholly* within the *jurisdiction* of the *bankruptcy* court under its paramount jurisdiction under the Constitution. See In re Jacobs (D. C.) 7 F. Supp. 749.

"It follows therefore that, when this debtor, in pursuance of the act of Congress giving him the right so to do, filed his petition that jurisdiction of all his property be taken over by this court, it became the court's *duty,* under the mandate of Congress, to exercise '*exclusive* jurisdiction.' Such is the law as made by the Congress, and that it is within the constitutional power of Congress the Supreme Court has clearly stated in Isaacs v. Hobbs Tie & Timber Co., supra, and Gross v. Irving Trust Co., supra. It remains for the court, in pursuance of its jurisdiction, to determine at what time, in what court, and by what procedure the mortgagee shall have its rights protected. All the debtor's property is within the custody and control of the court, including his equity of redemption or right to redeem, said by the Supreme Court of Illinois to be the same after sale as before sale."

In ***Eaves v. Glenn, et al.,*** supra, the court also pertinently stated:

"I am impressed that it was the intention of Congress that, all such legal proceedings, after the filing of the petitions in bankruptcy by these plaintiffs, were conditionally denied to the defendant. I do not see why the very appearances in these equity cases, and making the *motions* to *dismiss* the proceedings, and filing the answers to

the merits, are not also denied to defendant, in the absence of a petition made to and granted by this court, after a hearing and report by the *conciliation commissioners,* etc., as is provided in paragraph (o) of section 75. The fact that the proceedings in Bell County were instituted prior to the filing of such petitions in bankruptcy gives no right whatever to pursue those proceedings to a finality, except in a prescribed way. As far as the intent of Congress is concerned, nothing could be made plainer. The provisions of paragraph (o) are too plain for construction that, whether such a state suit has been filed before or after the farmer's petition in bankruptcy, all proceedings in court or otherwise, against the farmer or his property, must stop until certain things have been done, and certain things have happened, none of which have been done, and none of which have happened here. Subdivision (2) of paragraph (o) makes it plain to my mind that it is *not* even necessary for the question of *title,* or divestiture of title, to be involved, but that it is only necessary for a question of the recovery of the possession of land to be involved. Certainly whatever additional proceedings might take place in the Bell County suit, looking to a completion of the title in the plaintiff Glenn in that suit, or placing him in possession of the lands in question, would be proceedings that are intended to be *inhibited* by this act. I think, without permission, any further proceedings in the Bell County suit would be in violation of several of these numbered subdivisions of paragraph (o)."

The foregoing authorities should suffice to indicate to this Court that the District Court was clearly in

error in concluding that as to the real property listed in the schedules it was bound by any doctrine of estoppel or res adjudicata arising from state court actions or former proceedings of petitioner under Section 75. For the same reason, the error of the Circuit Court of Appeals becomes indeed obvious in concluding that petitioner had failed to establish that it owned such property and was a farmer. Petitioner was prevented from establishing such very fact because the District Court ignored the plain wording, spirit and purpose of Section 75 and erroneously refused to avail itself of the exclusive jurisdiction conferred upon it by that section. The pertinent subsections of said Section 75 follow:

Subsection (n) provides "The filing of the petition * * * shall immediately subject the farmer and all his property to the exclusive jurisdiction of the court, including *all* real or personal property * * *"

The section then points out that the jurisdiction of the courts and the rights of creditors "shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day * * * the petition was filed".

Subsection (o) prohibits the filing or prosecution of certain state court actions there referred to.

Subsection (p) extends this prohibition to all courts, state and Federal, to all creditors and provides that all the debtor's property shall be under the sole jurisdiction and control of the Bankruptcy Court.

It has repeatedly been held that the exercise of such exclusive jurisdiction may not in any way be frustrated, modified or impeded by any actions of a state court. Nor may such jurisdiction be changed or waived by an improvident consent or stipulation of counsel such as was entered into in these proceedings (R. p. 68).

> "Congress intended that the filing of such a petition in bankruptcy by the farmer was to be a *caveat* to all the world that all legal proceedings against the farmer either to divest him of the title to property or of the possession of property should *cease* upon the filing of such bankruptcy petition and that thereafter the farmer's rights with respect to the title or possession of property, as well as the right of all his creditors, should be submitted to and passed upon by the *bankruptcy court* to the exclusion of all other courts."

Eaves v. Glenn, et al., 9 F. Supp. 647-648.

> "Subdivision (n) of Section 75 of the Bankruptcy Act purports to subject the farmer and his property, wherever located, to the exclusive jurisdiction of the bankruptcy court * * * This was sufficient to give the bankruptcy court power to hear and determine all questions respecting title, possession or control of the property in a summary manner. Murphy v. Hofman, 211 U. S. 562, 53 L. ed. 327; Page v. Natural Gas Corporation, 286 U. S. 269, 76 L. ed. 1096; McDaniel Nat. Bank v. Bridwell (C. C. A.-8) 65 Fed. (2d) 428. * * *"

U. S. Bank v. Pamp, 77 F. (2d) 9.

The foregoing doctrines have found frequent application in the federal courts, as will present appear. These decisions overwhelmingly establish that upon controlling jurisdictional grounds the decisions in the state court actions, as well as the judgment in the former proceedings of the petitioner under Section 75, were in no sense controlling upon either the District Court in its consideration of petitioner's present application for relief under said Section 75. The foregoing decisions likewise fully indicate the impropriety of the procedure following herein by the Special Master and the District Court whereby petitioner was foreclosed upon authority of prior and pending state court proceedings from disputing respondent's claim of ownership.

It seems too obvious for extended comment that both the Special Master and the District Court misconceived their powers and jurisdiction in relation to this present application of petitioner for relief under said Bankruptcy Act. A proper performance of those functions entailed no arbitrary finding upon the hearing of such motion to dismiss, that respondent's pleas of res adjudicata and estoppel, arising from the state court actions or from the former proceedings of the debtor, were well taken or that the court was without jurisdiction to proceed with petitioner's application. The proper administration of Section 75 of the Bankruptcy Act in this instance warranted only a denial of the motion of respondent to dismiss, a hearing upon the merits before the Conciliation Commissioner as

the statute contemplated, and thereafter a determination of respondent's claim of ownership, in summary proceedings instituted for that very purpose.

II.

PARAMOUNT AND EXCLUSIVE JURISDICTION HAVING BEEN CONFERRED BY SAID SECTION 75 UPON THE BANKRUPTCY COURTS, THE STATE COURT WAS WITHOUT JURISDICTION IN THE LAST UNLAWFUL DETAINER ACTION, THE FINDINGS OF THE SPECIAL MASTER ERRONEOUS, IN SO FAR AS THEY ARE BASED UPON THE DECISION OF THE LAST UNLAWFUL DETAINER ACTION, AND THE JUDGMENT OF THE DISTRICT COURT ERRONEOUS, IN SO FAR AS IT AFFIRMS SUCH FINDINGS.

This Court has been advised that at the time respondent's motion to dismiss petitioner's application for relief was filed there was pending a state court unlawful detainer action commenced by respondent to dispossess petitioner from this property. Upon authority of the judgment thereafter rendered in said state court action the lower court adopted the Special Master's findings that petitioner did not own the property and his recommendation that the debtor's proceedings be dismissed (R. pp. 64, 127). In so doing the lower court was clearly in error aside from the fact that title or ownership is not an issue in such state court actions (105 P. 2nd 615), for the jurisdiction of the state court in such proceedings manifestly ter-

minated with the filing of petitioner's present application for relief.

Upon the filing of the petitioner's application for relief the bankruptcy court was vested with sole and exclusive jurisdiction over the property listed in the schedule and in the possession of petitioner. It has sole and exclusive jurisdiction thereafter to determine in summary proceedings this controversy over ownership. Such jurisdiction manifestly was not exercised by passively submitting to or acquiescing in the asserted conclusive effect of prior state court actions, by abiding the outcome of a pending state court unlawful detainer action or by thereafter foreclosing petitioner from disputing respondent's claim of ownership because of the judgment rendered in said pending state court action.

Subdivision (n) of said Section 75 refers to this jurisdiction of the bankruptcy court in debtor's application as being the same as if a voluntary application for adjudication had been filed and a decree of adjudication entered.

In discussing the extent of such jurisdiction this Honorable Court has thus declared the rule in

> *Gross v. Irving Trust Co.*, 289 U. S. 342, 53 S. Ct. 605, 606, 77 L. ed. 1243, 90 A.L.R. 1215:
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> "Upon adjudication of bankruptcy, title to all the property of the bankrupt, wherever situated, vests in the trustee as of the date of filing the petition in bankruptcy. The bankruptcy court has *exclusive* jurisdiction, and that court's pos-

session and control of the estate cannot be affected by proceedings in other courts, state or federal. Isaacs v. Hobbs Tie & T. Co., 282 U. S. 734, 737, 51 S. Ct. 270, 75 L. Ed. 645, and cases cited. Such jurisdiction having attached, control of the administration of the estate cannot be surrendered even by the court itself."

To the same effect, *Daly v. Sternberg*, 293 U. S. 470, 70 L. Ed. 599.

In the earlier case of *Isaacs v. Hobbs Tie & T. Co.*, 282 U. S. 734, at page 737, 51 S. Ct. 270, 271, 75 L. Ed. 645, the court said:

"Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. Mueller v. Nugent, 184 U. S. 1, 14, 22 S. Ct. 269, 46 L. Ed. 405. The title and right to possession of all property owned and possessed by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the court sits. Robertson v. Howard, 229 U. S. 254, 259, 260, 33 S. Ct. 854, 57 L. Ed. 1174; Wells & Co. v. Sharp (C. C. A.) 208 F. 393; Galbraith v. Robson-Hilliard Grocery Co. (C. C. A.) 216 F. 842. It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. Robertson v. Howard, supra; In re Wilka (D. C.) 131 F. 1004. When this jurisdiction has attached, the court's possession cannot be affected by actions brought

in other courts. White v. Schloerb, 178 U. S. 542, 20 S. Ct. 1007, 44 L. Ed. 1183; Murphy v. John Hofman Co., 211 U. S. 562, 29 S. Ct. 154, 53 L. Ed. 327; Dayton v. Stanard, 241 U. S. 588, 36 S. Ct. 695, 60 L. Ed. 1190."

In *Re Lawman*, 8 F. Supp. 886, the court declared that Congress intended to *stay* all proceedings in state or federal courts affecting one who had filed a petition under said Section 75 of the Bankruptcy Act.

In *Re Cope*, 8 F. Supp. 961, 77 F. 2nd 993 the inhibitions of Section 75 against such state court actions were held to be *self-executing*.

It should be observed that subsection (p) of said Section 75 provides:

> "The prohibitions of subsection (o) shall apply to all judicial and official proceedings in any court or under the direction of any official and shall apply to all creditors public or private and to all the debtor's property wherever situated. All such property shall be under the sole jurisdiction and control of the Court in bankruptcy."

This subsection reaffirms and reemphasizes the exclusive jurisdiction conferred by the preceding subsections upon the bankruptcy court to adjudicate all controversies over title or possession of property scheduled by a petitioning debtor.

The jurisdiction of the bankruptcy court to determine *all cases* and *controversies* between the bankrupt and any creditor is essentially an indisputable and exclusive jurisdiction. Such doctrine is plainly an-

nounced by *Watts v. Sacks*, 190 U. S. 1, 47 L. Ed. 933; *Straton v. Andy New*, 283 U. S. 318, 75 L. Ed. 1060; *Acme Harvester Co. v. Beckman Lumber Co.*, 220 U. S. 300, 56 L. Ed. 208.

In *Acme Harvester Co. v. Beckman Lumber Co.*, supra, the court significantly declared that all property claimed by the bankrupt is in *custodia legis* from the time of the filing of the petition in bankruptcy.

In *Ex parte Baldwin*, 291 U. S. 610, 78 L. ed. 1020, 1023, this court declared:

> "All property in the possession of a bankrupt of which he *claims* the ownership passes upon the filing of a petition in bankruptcy into the custody of a court of bankruptcy. To protect its jurisdiction from interference, the court may issue an injunction. The power is not peculiar to bankruptcy or to federal courts. It is an application of the general principle that where a court of competent jurisdiction has through its offices taken property into its possession, the property is thereby *withdrawn* from the jurisdiction of *other* courts.
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> "Having possession, the court * * * is entitled to determine all questions respecting the same. Julian v. Central Trust Co., 193 U. S. 93, 112; 48 L. Ed. 629, 639; * * * The jurisdiction in such cases is exclusive of the jurisdiction of other courts, although otherwise the controversy would be cognizable."

To the same effect is the opinion in *Thompson v. Magnolia Petroleum Co.*, 300 U. S. 478, 84 L. Ed. 876-9.

The court there significantly declared:

> "Bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession; and the *test* of jurisdiction is *not title*, but possession by the bankrupt * * * The jurisdiction thus acquired by the bankruptcy court extends to its adjudication respecting *title*."

Petitioner herein was in possession of the property at the time respondent moved for a dismissal of the proceedings.

In *In Re Tray*, 80 F. (2d) 9, the court declared that the purpose of the section is to enable the court to control property *claimed* by the bankrupt until the bankrupt's interest is determined by summary proceedings therein.

It has furthermore been just as plainly declared that such exclusive jurisdiction of the District Court having been invoked and attached it extends to the determination of all questions involved whether resting upon *state* or federal law (*Louisville and Nashville Railroad Co. vs. Greene*, 244 U. S. 522, 61 L. ed. 1291).

In *In Re Koch*, 116 F. (2d) 243, 246, a state court action proceeded to judgment prior to the bankruptcy adjudication. The state court judgment directed the receiver appointed by the state court to take possession of and title to all property derived by the fraud of the defendants therein, including the defendant Koch. The bankruptcy court enjoined the receiver from taking possession of property claimed by the

bankrupt and directed the receiver to return property alleged to have been obtained by said defendant through such fraud. The court stated:

> "Where a bankrupt is in possession of property, the bankruptcy court has jurisdiction to adjudicate in summary proceedings the rights of adverse claimants. (Citing cases) We are satisfied that the District Court had jurisdiction to *determine summarily* whether the *property claimed* by the debtor was hers."

In *In Re Wilkinson,* 10 F. Supp. 100, it is to be observed that the court held that a chattel mortgagee's right to possession of the property could properly be adjudicated only *after* the *conciliation commissioner* had in the regular course of the proceedings under Section 75 made his report and that such adjudication could *not* be made upon a *motion* to *dismiss* the debtor's petition for relief.

Nevertheless, in this instance, as heretofore observed, the special master upon the hearing of respondent's motion to dismiss the petition of petitioner for relief, presumed to find that the respondent was entitled to the possession of the property and that the debtor was estopped to dispute such right to possession, the validity of the foreclosure sale or the important question of ownership by certain state court proceedings, *one* of which was *pending* when respondent's motion to dismiss was referred to him by the bankruptcy court. The lower court held likewise and directed judgment accordingly.

In *Re O'Brien* (1935; C. C. A. 2d) 78 F. (2d) 715 (affirming (1935; D. C.) 9 F. Supp. 892, 27 Am. Bankr. Rep. (N. S.) 376), it was held that, after the filing of a petition by a farmer-debtor under Section 75, the docketing of a judgment obtained subsequent thereto, in an action pending when the petition was filed which by state law constituted a lien on the property in question and prevented the carrying out of a composition, violated the theory, purpose, and express provisions of subsections (e), (n), and (o) of the section, which contemplate immunity of all property under the jurisdiction of a bankruptcy court from proceedings in state courts, and that consequently the creditor should be ordered to *discharge* or otherwise release the state court judgment as a *cloud* upon title.

In the light of the foregoing decisions and the plain provisions of said Section 75, therefore, it seems incontrovertible that the state court was with jurisdiction to proceed with the last unlawful detainer action after the filing of petitioner's application for relief under said section. If so, the conclusions of the Special Master and the judgment of the District Court were clearly erroneous in determining that by reason of the judgment in said unlawful detainer action petitioner was estopped to question respondent's claim of ownership. Likewise, the decision of the Circuit Court affirming said judgment, findings and procedure of the Special Master and District Court, is in conflict with the foregoing section of the Bankruptcy Act and the decisions referred to.

III.

PETITIONER WAS NOT ESTOPPED BY THE JUDGMENT IN ITS PREVIOUS PROCEEDINGS UNDER SAID SECTION 75 TO DISPUTE RESPONDENT'S PRESENT CLAIM OF OWNERSHIP.

It would be repetitious of what has heretofore been discussed were petitioner to elaborate on its contention that neither the Special Master nor the District Court was controlled upon petitioner's present application for relief by any former proceedings commenced by petitioner for relief under said section of the Bankruptcy Act. In this regard it should suffice to say that the decisions heretofore referred to extend no authority to either a Special Master or a bankruptcy court to arbitrarily conclude upon a motion to dismiss such an application that the rights of an applicant for relief under said section have been foreclosed by his previous proceedings under said Section 75.

Whether or not there was such a valid prior adjudication of this question of ownership in the former proceedings was and it is at least a matter of substantial controversy. In any event this petitioner claimed to be the owner of such property. Petitioner was in possession, and as already pointed out, this court and other Federal Courts have repeatedly determined that in such instance the Bankruptcy Court is not controlled by actions in either State or Federal Courts. Instead such Bankruptcy Court must properly exercise its jurisdiction by determining such claim of ownership in summary proceedings after full inquiry and hearing before the conciliation commissioner. We

therefore discuss the effect of the judgment in the former procedures but briefly as its effect is beside the point here involved.

The decision of the Circuit Court of Appeals in the former proceedings of the applicant for relief is set forth in 94 Fed. (2d) 491. The decision of that court is predicated solely upon the fact that at that particular time petitioner lacked corporate capacity and therefore the bankruptcy court was without jurisdiction. The Circuit Court of Appeals in that decision did significantly point out the fact that the property purported to have been sold at the foreclosure sale by one *not authorized* to conduct such sale.

But aside from this fact, it seems obvious that the District Court in the former proceedings, having determined that it was without jurisdiction by reason of the corporate incapacity of petitioner, it lacked jurisdiction thereafter to determine any other fact asserted by either petitioner or respondent therein. If petitioner at that time lacked corporate capacity, it could not engage in farming operations and therefore was entitled to no relief and the court was without jurisdiction to entertain such proceedings. (*Davis v. Shackleford,* 91 Fed. (2d) 148-150; same effect, *In re Weiss,* 10 Fed. Supp. 227-229; *In re Peterson,* 8 Fed. Supp. 86).

Where, in the course of a bankruptcy proceeding, it is made to appear that there is an end of jurisdiction, the court should proceed no further except to dismiss the proceedings for want of jurisdiction. (*Finn v. Carolina, etc. Co.,* 232 Fed. (C.C.A.) 815, 818; see also *In re Palma Bros.,* 8 Fed. Supp. 920)

Where the court is wholly without jurisdiction to try a particular title or right, its judgment or decree is not of course conclusive as to such title or right (34 Corp. Jur. p. 955).

> "No conclusive effect can be given to a judgment which is absolutely void whether the invalidity results from want of jurisdiction of the parties or over the subject matter of the controversy or from want of authority in the court. * * *"
>
> 34 *Corp. Jur.* pp. 899, 900.

A judgment void for want of jurisdiction is open to contradiction or impeachment in a collateral proceeding. The defect of jurisdiction may be wanting in respect to the person, the subject matter or the authority to render the particular judgment or decree. (34 *Corp. Jur.* pp. 528, 531).

> "A judgment rendered by a court having no jurisdiction is a *mere nullity* and will be so held and treated whenever and for what purpose it is sought to be used and relied on as a valid judgment."
>
> 33 *Corp. Jur.* 1073.

> "Where a judgment is void for want of jurisdiction whether of the subject matter or of the person of the defendant, it is of *no* effect whatever as an *estoppel* * * *"
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> 34 *Corp. Jur.* p. 768, citing
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> *Jasper Bank v. Rome First Nat. Bank*, 258 U. S. 112, 66 L. Ed. 490, and other cases.

"A judgment dismissing a suit on account of any technical defect, irregularity or informality is not on the merits and is therefore no bar to a subsequent action."

34 *Corp. Jur.* p 793.

"* * * The same rule applies to a dismissal on the sole ground that plaintiff has not sufficient title or authority to bring the suit or for want of capacity to sue on his part."

34 *Corp. Jur.* 793.

"A dismissal of an action on the sole ground that the court has no jurisdiction of the subject matter of the suit or of the parties is no adjudication of the merits and will not bar another action for the same cause."

34 *Corp. Jur.* 795, citing
S. P. Co. vs. Vegort, 250 U. S. 483, 39 Supreme Court 533, 63 L. Ed. 1099, and other cases.

Further citation of authorities on the foregoing rules would be merely cumulative. Suffice it to say that the District Court in the previous proceedings of petitioner as a debtor having found that it had no jurisdiction to entertain the proceedings by reason of corporate incapacity, such court was without jurisdiction to make any determination upon this question of ownership of the property. In so far as the judgment in the former proceedings purported to make such finding upon the issue of ownership, it is submitted that said judgment was void upon its face.

We repeat that the Circuit Court of Appeals in that proceedings expressly refrained from approving the

judgment of the District Court upon this issue of ownership (94 Fed. 2d 493).

The foregoing discussion seems ample to indicate that at the time of the petitioner's present application for relief substantial question at least existed as to the validity of respondent's claim of ownership. The fact that there was such controversy and the fact that petitioner was in possession of the property at the time it filed its present application for relief made it mandatory for the bankruptcy court to comply with the rule as to its exclusive jurisdiction set forth in the decisions quoted herein and to require that such controversy should be determined in summary proceedings after a hearing before the Conciliation Commissioner.

The lower court, as well as the Special Master, instead disregarded the established mode and procedure for determining such controversy and arbitrarily and erroneously concluded that petitioner was estopped to dispute respondent's claim of ownership by reason of the District Court judgment in the former proceedings of petitioner under said Section 75 (R. pp. 64, 128). While the decision of the Circuit Court of Appeals held at least inferentially that such debtor *may* establish ownership it wholly failed to recognize the fact that no opportunity was given to said debtor to establish such ownership because of the lower court's refusal to exercise its jurisdiction as prescribed by statute and overwhelming judicial precedent.

IV.

THE STIPULATION ENTERED INTO BY FORMER COUNSEL FOR PETITIONER AND COUNSEL FOR RESPONDENT TO ABIDE THE OUTCOME OF THE LAST STATE COURT UNLAWFUL DETAINER ACTION AND TO BE GOVERNED THEREBY, WAS UNLAWFUL, IMPROVIDENT AND INEFFECTIVE. THE SPECIAL MASTER ERRONEOUSLY ACCEPTED SAID STIPULATION AND BASED HIS RECOMMENDATION OF DISMISSAL OF PETITIONER'S APPLICATION UPON SAME AND THE JUDGMENT RENDERED IN SAID STATE ACTION. THE DISTRICT COURT ERRONEOUSLY REFUSED TO RELIEVE PETITIONER FROM SUCH STIPULATION.

As heretofore pointed out, the state court in the last unlawful detainer action was permitted to proceed to the completion of said action by stipulation of former counsel for petitioner and counsel for respondent (R. p. 68). This improvident stipulation stipulated that petitioner's application for relief and the bank's motion to dismiss should be governed by the outcome of the decision in that state court action, an action which, it should be emphasized, did not involve a determination of any issue of title (105 Pac. 2d. 615).

Immediately upon the rendition of the decision in that action, the Special Master filed his findings and report with the lower court recommending the dismissal of petitioner's present application for relief. The recommendation of the Special Master was predicated to great extent upon the effect of such stipulation and the judgment in said unlawful detainer action (tr. pp. 61, 64, 65). The lower court

accepted that recommendation and directed judgment accordingly. This was clearly an unprecedented and unjustified procedure, if Section 75 and the decisions heretofore referred to have any significance.

Assumably the issue of title or ownership in the minds of the signers of such stipulation, if not in the mind of the Special Master, remained in substantial dispute at the time such stipulation was executed. The stipulation manifestly had no other purpose than to resolve that dispute by a short cut to the pending state action. If it be assumed that the Special Master was in good faith attempting to determine the validity of respondent's assertion that it owned the property listed by petitioner in its schedules, then the Master contemplated that that issue of ownership would be decided by the forthcoming state court decision.

To summarize, the Special Master attempted to determine that important issue of title by accepting a stipulation directed to the outcome of a state court action which could not decide the very issue he, the Special Master, was at that time meditating (105 Pac. 2d 615).

Of course the error of the foregoing process of the Special Master becomes undeniably obvious in the light of the decisions heretofore referred to. The foregoing discussion seems ample to indicate to this court that the stipulation presuming to terminate petitioner's proceedings for relief upon the basis of the last state court detainer action was indeed improvident, wholly unwarranted, and void ab initio. The lower court should promptly have granted peti-

tioner's request to be relieved therefrom. Instead, said court erroneously denied said motion of petitioner and affirmed the findings and recommendation of the Special Master upon authority of said stipulation, as well as the outcome or judgment in said last state court unlawful detainer action.

V.

THE DEFICIENCY JUDGMENT AND THE ACTION TO RENEW THE SAME CREATED NO ESTOPPEL AS AGAINST PETITIONER IN REGARD TO THE FACT OF THE OWNERSHIP OF THIS PROPERTY.

Such actions are referred to with contrary effect in the Special Master's findings (R. pp. 56, 57, 61).

In view of the fact that this question is also one which should properly have been determined only after a hearing before the Conciliation Commissioner and by summary proceedings instituted under the direction of the lower court, our discussion of the foregoing contention will be limited.

The deficiency action was brought on a common count for an alleged balance due upon a promissory note. All of the allegations of the complaint were denied by petitioner. Neither the pleadings nor the judgment in the deficiency action indicate that it involved petitioner's farming property or that the note referred to was secured by a deed of trust executed by petitioner. The foregoing facts respondent will concede. Only by imagination or conjecture might

it be concluded that this was an action for deficiency judgment or that the validity of the foreclosure sale was an issue.

In

Blumenthal v. Maryland Cas. Co., 119 Cal. App. 566, 6 Pac. 965,

it is stated:

"*But if upon the face of the record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel.*" (Italics ours.)

In

Lillis v. Emigrant Ditch Co., 95 Cal. 553, 559-560, the court states:

"In any other action between the same parties upon a different demand; though involving facts which were litigated in the former action, such judgment is conclusive only as to the same matters *in issue* which were determined in the former action, and which were also essential to the rendition of the judgment. * * * The matter adjudicated, to become as a plea, a bar, or as evidence conclusive, *must have been directly in issue*, and not merely collateral litigated. * * * It must be a fact immediately found *according to the pleadings*, not that on which the verdict was immediately based—a fact in issue as distinct from a fact in controversy. * * * *A fact or matter in issue is that upon which the plaintiff proceeds by his action, and which the defendant controverts in his pleadings; while collateral facts are such as are offered in evidence to establish the matters or*

facts in issue; and notwithstanding they may be controverted at the trial, they do not come within the rule." (Italics ours.)

Lillis v. Emigrant Ditch Co., 95 Cal. 553, 559-560; 30 Pac. 1108.

In the deficiency case, the declaration was upon a promissory note, no copy of which was set forth, it being pleaded according to its legal effect. Upon that note it was alleged that a certain sum remained unpaid. There was nothing in the complaint indicating in any way that the note had been secured, by deed of trust or otherwise.

The execution of the note was admitted by appellant's answer. Non-payment was denied for want of information and belief—as a matter of law, non-payment was admitted. There was no special defense, alleging that the note had been secured by deed of trust and that the deed of trust had not been foreclosed.

Therefore there was no issue of fact as to whether the note had been secured, nor any as to whether the security had been foreclosed by sale under a deed of trust.

The regularity of the foreclosure sale was therefore not an "issue" in the deficiency case. Not having been made an issue, it could not be litigated. Even had there been a finding that such a sale had been made (which there was not), that finding would have been outside the issues, void and of no effect for any purpose.

"It is contemplated by our law that findings of fact shall be made only upon issues joined in the pleadings."

Waller v. Weston, 125 Cal. 201, 204; 57 Pac. 892;

Perkins v. Perkins, 29 Cal. App. 68, 70; 54 Pac. 483.

The foregoing argument applies as well to the action filed in the State court to renew the alleged deficiency judgment.

The conclusion of the Special Master and the District Court that the validity of the foreclosure sale or the issue of ownership had been decided by the judgment in the deficiency action, as well as in the action to renew same, we believe, was wholly erroneous. But whether it was or not the question at least was seriously disputable and was one that could only be properly and legally resolved and disposed of with the other questions presented in summary proceedings, and after hearing of petitioner's application upon the merit before the Conciliation Commissioner.

VI.

AN APPLICANT FOR RELIEF UNDER SECTION 75 OF THE BANKRUPTCY ACT IS NOT REQUIRED TO BE THE OWNER OF FARMING PROPERTY. IN ANY EVENT SUCH APPLICANT SHOULD NOT BE FORECLOSED FROM ESTABLISHING THAT HE IS SUCH OWNER.

Aside from the fact that petitioner had no opportunity to establish the fact there is no requirement in

the statute that an applicant for relief under Section 75 of the Bankruptcy Act must be the owner of farming property. Subdivision (c) of Section 75 identifies the particular person entitled to relief thereunder. It provides:

> "At any time within five years * * * a petition may be filed by *any* farmer * * *"

Subdivision (r) of that section defines a farmer as including:

> "not only an individual who is primarily bona fide engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming."

The beneficent purpose of this act of Congress denies any construction that would limit its application to farmers who are the owners of land.

An applicant for relief under this section of the Bankruptcy Act may be an owner of land or he may be a tenant of land. He may be operating under a cropper's contract or he may be one who is engaged in producing products of the soil upon land in which he has no interest whatsoever.

Such, we submit, is the only effective interpretation to be given to this particular statute.

As we understand the decision of the Circuit Court of Appeals, it is to the effect that petitioner was not a farming corporation because it had not established that it was the owner of this property—and this despite the fact that by the erroneous conclusions

of the Special Master and the lower court, as to the absolute effect of state decisions and the former proceedings of the debtor, petitioner was prevented from establishing that very fact of ownership.

If this is the proper effect to be given to the decision of the Circuit Court in this matter, and if a petitioning debtor must own the farming property, then it is submitted that said decision is also in conflict with the statute and the decisions heretofore referred to by denying to petitioner full opportunity to supply in summary proceedings, such required proof of ownership.

CONCLUSION

The foregoing authorities seem demonstrative upon these propositions. The judgment of the lower court in directing the dismissal of the petitioner's application upon the basis of the stipulation of counsel and upon the ground that the debtor was foreclosed by state court actions and the former proceedings under Section 75 from disputing the claimed title of appellee was wholly erroneous. Said District Court should promptly have relieved petitioner from the effect of the unlawful and improvident stipulation entered into by its former counsel. Said court should then as promptly denied respondent's motion to dismiss and then assumed the paramount and exclusive jurisdiction and control over the property claimed by the debtor in accordance with the plain requirements of said Section 75. Thereafter the same court should

have fully discharged its duty by determining in summary proceedings the disputed question of ownership in accordance with the facts as well as the law.

For the foregoing reasons it is respectfully submitted that the writ of certiorari should issue as prayed for herein.

Respectfully submitted,

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Counsel for Petitioner.